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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,474	10/07/2005	Paul F McKee	36-1945	2192
23117 7590 09/15/2010 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
ABBASZADEH, JAWIED A				
ART UNIT		PAPER NUMBER		
2115				
MAIL DATE		DELIVERY MODE		
09/15/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/552,474

Applicant(s)

MCKEE ET AL.

Examiner

JAWEED A. ABBASZADEH

Art Unit

2115

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-24 are presented for examination.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 22 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. This claim is directed to a computer-readable medium. However, the specification is silent regarding the definition of the computer-readable medium. Examiner is obliged to give claims their broadest reasonable interpretation consistent with the specification. See *In re Zletz*, 893 F.2d 319 (Fed. Cir. 1989) The broadest reasonable interpretation of a claim drawn to a computer-readable medium typically covers forms of non-transitory tangible media and transitory propagating signals per se in view of the ordinary and customary meaning of computer-readable media, particularly when the specification is silent. See MPEP 2111.01. Therefore, the claims are rejected as covering non-statutory subject matter. See *In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter) and Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. § 101, Aug. 24, 2009; p. 2.

Claim Rejections - 35 USC § 102

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-24 are rejected under 35 U.S.C. 102(a) as being anticipated by Zollner et al. (hereinafter 'Zollner') US 2003/0163557.

As to claim 1, Zollner teaches a computer system comprising:

a plurality of components that can be initialized [0029—"plurality of communication devices"], each component being operable to perform at least one task when not being initialized [Communication devices perform tasks related to performing communication when not being initialized. The communication devices are initialized (resetted) after an event such as upgrading 0004],

wherein each component is configured to produce status data [0036—"usage"] from which the level of need for that component to be initialized can be inferred, the status data representing a predetermined level of need for that component to be initialized [The higher the usage, the higher the level of need for the communication device to be initialized], and

wherein at least one component is configured to:

receive status data from other components [0043—"At step 404, the zone controller receives system usage information associated with the sites and/or communication device"];

make a comparison using the status data received from respective components [0044—"A comparison inherently occurs in order to prioritize. It must be determined which device has higher or lower usage than the other. This requires a comparison to occur.];

in dependence on the comparison, select one or more components for initialization [0044—"based on the rule-based criteria and system usage information, a restart sequence for the sites"]; and

issue initialization instructions to the selected component(s) [0045—"Then, at step 408, the zone controller brings system device(s) into service at various sites based on the restart sequence."].

As to claim 2, Zollner teaches each component configured to make a comparison using status data is configured to use its own status data in addition to the received status data when making the comparison [Fig. 3 and 0042-0045].

As to claim 3, Zollner teaches the components are software components, and wherein the system includes at least one computer device on which, in use, the software components are run [Fig. 3 and 0042-0045].

As to claim 4, Zollner teaches the status data is in the form of an initialization parameter [Fig. 3 and 0042-0045].

As to claim 5, Zollner teaches each component is configured to execute an initialization routine when the initialization parameter for that component reaches a respective threshold value, the initialization routine including the step of transmitting a request for an initialization parameter to other components [Fig. 3 and 0042-0045].

As to claim 6, Zollner teaches the initialization routine includes the further steps of: receiving initialization parameters from at least some of those other components; comparing the received initialization parameters with the initialization parameter for that

component; and, in dependence on the comparison, making a self-initialization decision [Fig. 3 and 0042-0045]..

As to claim 7, Zollner teaches each component includes a timer module for registering the elapsed time since the previous initialization of that component, and wherein for each component, the initialization parameter is determined at least in part in dependence on the elapsed time registered by the timer module [Fig. 3 and 0042-0045]..

As to claim 8, Zollner teaches each component is configured to produce an initialization parameter that is at least in part dependent on whether the component is performing one of a number of predetermined tasks [Fig. 3 and 0042-0045]..

As to claim 9, Zollner teaches the computer system includes a plurality of interconnected computer devices, each of which is housed in a respective housing, and wherein each device has, in use, a respective software component running thereon [Fig. 3 and 0042-0045]..

As to claim 10, Zollner teaches the software components each include a respective operating system module for operating the computer device on which the respective software component is running [Fig. 3 and 0042-0045]..

As to claim 11, Zollner teaches each component is configured to initiate a re-boot routine upon receipt of an initialization instruction, the re-boot routine being configured to re-boot the computer device on which the software component is running [Fig. 3 and 0042-0045]..

As to claim 12, Zollner teaches the re-boot routine includes the step of determining if the computer device is performing a predetermined task or one of a number of predetermined tasks, and only to permit the re-booting of the computer device if the computer device is not performing such a task [Fig. 3 and 0042-0045]..

As to claim 13, Zollner teaches the components in use run on a common computer device, under the control of a common operating system [Fig. 3 and 0042-0045]..

As to claim 14, Zollner teaches each component, upon receipt of an initialization instruction, is configured such that the component is killed and subsequently restarted [Fig. 3 and 0042-0045]..

As to claim 15, Zollner teaches a computer device configured to allocate tasks to the components, such that a task allocated to one component is dependent on the task or tasks being performed by at least some of the other components [Fig. 3 and 0042-0045].

As to claims 16-24, Zollner teaches this claim according to the reasoning set forth in claim 1 *supra*.

Response to Arguments

Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAWEED A. ABBASZADEH whose telephone number is (571)270-1640. The examiner can normally be reached on Mon-Fri: 7:30 a.m.-5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Lee can be reached on (571) 272-3667. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jaweed A Abbaszadeh/
Examiner, Art Unit 2115
9/9/2010

/Thomas Lee/
Supervisory Patent Examiner, Art Unit 2115